



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/152212

PRELIMINARY RECITALS

Pursuant to a petition filed September 18, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Kenosha County Human Service Department in regard to Medical Assistance, a hearing was held on October 15, 2013, at Kenosha, Wisconsin.

The issue for determination is whether petitioner's appeal was timely filed.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Karen Mayer, Fair Hearing Coordinator
Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. On June 10, 2013, the agency sent Petitioner a notice that effective July 1, 2013, Petitioner would not be enrolled in BadgerCare+ because she had access to other health insurance through an employer.

3. The petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on September 18, 2013.

DISCUSSION

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning MA must be filed within 45 days of the date of the action. Wisconsin Stat. § 49.45(5); Income Maintenance Manual § 3.3.1. A negative action can be the denial of an application, the reduction of benefits or termination of an ongoing case. The petitioner's appeal was filed on September 18, 2013, 79 days after the July 1, 2013, date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

Even if there was jurisdiction to hear the merits of Petitioner's case, the record shows that the agency acted correctly in terminating her benefits. Petitioner did not dispute the fact that her husband's employer offers health insurance; she did not dispute the premium amount for employee-only coverage provided to the agency (\$79.95 per month), nor did she dispute the agency's calculation of her household income (\$3432 per month).

9.5% of \$3432 is \$326.04. The employer's insurance premium of \$79.95 is less than 9.5% of Petitioner's household income. Per the BaderCare+ Eligibility Handbook §7.3.3 Petitioner is not eligible for BaderCare+ benefits.

Petitioner asked for leniency, stating that she cannot afford the premium. Petitioner also asserts that she was told that her husband would have to pay 1.50 per hour from his pay check for insurance. However, there are no good cause reasons for not enrolling in employer sponsored health insurance under BaderCare+ Eligibility Handbook §7.3.3. Further, Petitioner's arguments cannot be taken into consideration in determining whether the agency correctly terminated Petitioner's benefits, because administrative law judges do not have equitable authority. It should be noted that the letter Petitioner submitted only stated that there would be a \$1.50 per hour reduction in pay, if the employee did not provide proof of insurance to the employer by September 20, 2013. It did not state that the insurance premium was \$1.50 for each hour worked. (See Exhibit 2)

Until Petitioner is able to get her insurance situation worked out, she might find the following websites to be useful. They list free or reduced fee clinics:

http://freeclinicdirectory.org/wisconsin_care/kenosha_wi_county.html

<http://www.dhs.wisconsin.gov/forwardhealth/pdf/fqhc.pdf>

CONCLUSIONS OF LAW

There is no jurisdiction as the appeal is untimely.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative

Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

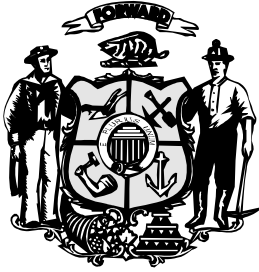
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 5th day of November, 2013.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 5, 2013.

Kenosha County Human Service Department
Division of Health Care Access and Accountability